IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 822 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAPUR TALUKA CO-OPERATIVE PURCHASE & SALE UNION

Versus

STATE OF GUJARAT

Appearance:

MR. ND NANAVATI WITH MR TUSHAR MEHTA for Petitioners
MR. S.N.SHELAT, LD. ADVOCATE GENERAL for Res. State
MR KS JHAVERI for Respondent No. 4 & 5
MR RS SANJANWALA for Respondent No. 6
MR GM JOSHI for Respondent No. 7
Mr.K.P. Rawal, AGP for Respondent No. 8, 15 & 16
MR BB NAIK for Respondent No. 9
MR DILIP B RANA for Respondent No. 12

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 24/04/2001

CAV JUDGEMENT

1. The Petitioner Vijapur Taluka Co-Operative Purchase & Sales Union Limited, is a Cooperative Society duly registered under the provisions of the Gujarat Co-Operative Societies Act, 1963. Petitioner No.2 is the Chairman of the Petitioner No.1 Society. The petitioner Society is working as General Commission Agent of agricultural produce within the market yard of Vijapur Market Committee, the Respondent No.4 in this petition. In this petition the petitioners challenge the validity of the registration of Respondents No. 9, 10, and 11 Cooperative Societies and their participation in the election of the said Market Committee. In 1999 the Market Committee was bifurcated and in place of elected members, State Government nominated members in both the bifurcated market committee of Vijapur and Mansa. The present petition relates to the challenge of registration of three Cooperative Societies, namely Respondent no. 9, 10 and 11 and also the omission of the name of the petitioner society from the voters list. It is alleged that the Vijapur Market Committee keeping in view of the ensuing election of the market committee started issuing licence to the traders as well as cooperative societies so as to enable them to form the market committee in the manner and of their choice. It is alleged that, though the petitioner is a Cooperative Society and is functioning in Vijapur Agricultural Produce Market Committee (APMC) area, their licence were not renewed by respondent No.4 Market Committee, for which the petitioners have filed Special Civil Application No. 814 of 2001 challenging the aforesaid action of non-inclusion of the petitioners in the voters list. It is also submitted that, by an interim order passed by this Court the petitioner Society is carrying on business in Vijapur APMC, but in spite of that, their name have not been reflected in the voters list. The non-inclusion of name of the petitioner have deprived the petitioner Society from contesting election from the constituency of Cooperative Market Society as contemplated under section 11 (1) (iii) of the Gujarat Agricultural Produce Markets Committee Act. It is also alleged that, with a view to keep the petitioner Society out of contest in the election and with a view to ensure favourable result, the Market Committee without following the procedure issued licence to respondent No. 9, 10 and 11 Primary Marketing Cooperative Societies which were illegally registered before the election process has been started. The respondent No.2 published the election program on 12-12-2000, fixing various stages of the election

(Annexure-D). As per the election program the first provisional voters list was published on 20-1-2001 and the petitioner was surprised at the non inclusion of their name for which they have already filed Special Civil Application No. 814 of 2001. From the said voter list petitioner came to know about the registration of respondents No. 9, 10 and 11 Cooperative Societies. On inquiry the petitioner also came to know that these Societies were registered on the basis of report of the Supervisory Committee but the said societies were not registered with the approval of the District Council. It is stated that, according to the Notification of the Government dated 31-8-1981, the District Council is only competent to register the Primary Cooperative Societies and in the present case the Respondent No. 9, 10 and 11 Cooperative Societies were not registered by the District Council and therefore, it is contented that, the registration of the aforesaid three respondent Societies are required to be cancelled. Petitioners also pray for a direction on respondent No.2 and 3 to delete the name of Respondent No. 9, 10 and 11 Societies from the voters list of Vijapur Marketing Constituency. All through the petition a general allegation has been made against respondent No.5 and 6 that at their instance all these illegal actions have been done.

2. The present petition has been filed when the election process was going on. This Court after hearing learned counsel of all the parties passed an interim order on 21-3-2001. In the interim order the election process was not held up but it has been directed that, if any person contests the election from any of the Cooperative Societies of Respondent No. 10 and 11, in that event the result of election of that constituency shall not be declared till the entire matter is finally decided. However, no one from Respondent No. 10 and 11 Society contested the election for being a member in the Vijapur Market Committee. From the Co-operative Marketing Society constituency two members were elected unopposed from Respondent No. 9 Cooperative Society. After the election of the Market Committee the petitioner amended the petition alleging that the registration of Respondent No. 9 Cooperative Society has been illegally done by the Assistant Registrar of Cooperative Societies and the District Council did not approve registration of respondent No. 9 Society. It is further contended that, according to the Notification of the Government dated 31-8-1981 the State Government authorised the District Council to register all the Cooperative Societies mentioned in Schedule-II of the said Notification at Annexure-E (page 46 of the petition) irrespective of the

fact that whether such Cooperative Societies falls within the Panchayat area or outside the Panchayat area. It is also contended that even if the respondent No. 9 Cooperative Society falls within the municipal limits of Mehsana district, even then the respondent No. 9 should have applied to the District Panchayat for registration of their Cooperative Society. Since registration of respondent No. 9 has not been done by the District Council the two candidates elected unopposed from respondent No. 9 Society are liable to vacate their office as elected members from the Cooperative Marketing Society Constituency. According to the amended prayer of the petitioner, the registration of Respondent No. 9, 10 and 11 Society is required to be quashed and the names of Respondent No. 5 and 12 who have been elected unopposed from Cooperative Marketing Society Constituency are to be quashed and set aside. The Respondent No.4 Market Committee filed reply wherein they had denied the allegation made by the petitioners. It is asserted by Respondent No.4 that the State Government issued a circular on 12th September 2000 whereby a Committee was constituted for giving opinion whether the Cooperative Society who has applied for registration can be registered or not. It is submitted that the application of Respondent no. 10 and 11 Cooperative Societies were placed before the Supervision Committee and the Supervision Committee passed a resolution on 17-12-2000 for registering respondent No. 10 and 11 Cooperative Societies and according to the recommendation of the Supervision Committee, Respondents no. 10 and 11 Cooperative Societies were registered and registration certificates have been issued by the Additional Registrar of Cooperative Societies for District Panchayat. It is therefore submitted that, no illegality has been committed. It is also submitted that, respondent No. 9 committee functions within the municipal area and therefore the registration certificate issued by the Additional Registrar, Cooperative Societies is sufficient compliance regarding registration of Cooperative Societies. Respondent No.5 also filed separate counter affidavit and the reply of respondent No.5 are on the same lines as that of the counter affidavit filed by respondent No.4. Respondent no. 9, 10 and 11 filed joint counter affidavit, wherein they have denied all the allegations made by the petitioner. It is submitted in the reply that, if the petitioners are aggrieved by the registration of respondent No. 9, 10 and 11 Cooperative Societies, they have an alternative remedy by way of filing appeal before the appellate authority and no writ petition can be filed against the order or registration of a Cooperative Society. However, it has been contended

that, according to the Government orders the Supervision Committee has power to decide whether any particular Cooperative Society will be registered or not. It is contended that, in case of respondent No. 9, 10 and 11 the Supervision Committee has taken a decision to register the said Cooperative Societies and accordingly registration certificate has been issued to respondent No. 9, 10 and 11 Cooperative Societies, and by such registration no illegalities have been committed and therefore no interference is called for. Respondent No. 6 has filed a short reply wherein he has denied that he was influenced by any person or authority in registering or in making inclusion or exclusion of voters in the voters list of the Vijapur Agricultural Produce Market Committee. Respondent No.12 also filed a short reply wherein he has submitted that since respondent No. 9, 10 and 11 Cooperative Societies were duly registered by the competent authority, the names of the members of the Managing Committee of the aforesaid Cooperative Societies were reflected in the voters list of the Cooperative Marketing Constituency of Vijapur APMC. The respondent No. 13 has also filed reply on same lines as submitted by respondent No. 12. The reply of respondent No. 14 is also on the same lines of respondent No. 12 and 13. The respondent No. 9 Society has filed an additional affidavit wherein it has been stated that the respondent no. 9 Society is situated within the Urban area namely Mehsana Nagarpalika and the area of operation of respondent No. 9 Society covers both in the urban area and partly in the rural area. Accordingly it is submitted that, since respondent No. 9 Society is situated in the urban area the District Panchayat has nothing to do with the registration of Respondent No. 9 Society. It is further asserted that the registration certificate issued by Assistant District Registrar, Cooperative Societies, Mehsana in favour of respondent No. 9 is legal and genuine one. Respondent No.3 has filed a counter affidavit. It is submitted by respondent No.3 that, since the election process has already started nothing can be done in respect of the finally published voters list. It is also stated that since Respondent No. 9, 10 and 11 Cooperative Societies are duly registered and the names of members of the Managing Committee have been reflected in the voters list properly and therefore no illegality has been committed. It is further submitted that, in view of the commencement of the election process the election is to be completed in accordance with the finally published voters list.

3. The short question raised in this petition for decision is; (a) who is the authority to register a

Cooperative Society which is functioning within the Panchayat area, (b) who is the competent authority for registering a Cooperative Society which is not operating in the Panchayat area.

4. Mr. N.D. Nanavati, Learned Senior Counsel appearing on behalf of the petitioners argued that, according to the Notification of the Government dated 31-8-1981 the State Government delegated powers, functions and duties of the Registrar to Cooperative Societies as specified in Schedule-I to the said notification to the District Panchayats in respect of Classes of Cooperative Societies specified in Schedule-II of the said notification. Mr. Nanavati argued that admittedly the respondent No. 10 and 11 Cooperative Societies are functioning within the Panchayat area and therefore according to the notification of the Government dated 31-8-1981 the District Panchayat of Vijapur is the only authority to register Respondent No. 10 and 11 Cooperative Societies. It is further submitted by Mr. Nanavati that, the application of respondent No. 10 and 11 Cooperative Societies have never been placed before the District Council and District Council did not approve any proposal for registration of respondent No. 10 and 11 Societies. It is argued by Mr. Nanavati that the Supervisory Committed constituted by the District Registrar of Cooperartive Societies, Mehsana is for the purpose of assessing the financial viability of new Cooperative Societies. It is submitted that the aforesaid committee has nothing to do with the registration of Cooperative Societies. Mr. Nanavati also argued that the said committee can examine financial viability of the new Cooperative Societies but their recommendation must be placed before the District Council who is the ultimate authority to take a decision regarding registration of Primary Cooperative Societies. It is an admitted fact that the application of respondent No. 10 and 11 Cooperative Societies were never placed before the District Council for approval of their registration. Consequently Mr. Nanavati, learned Counsel submitted that the registration of Respondent No. 10 and 11 Society by the Assistant Registrar of Cooperative Societies on the recommendation of the Supervisory Committee is illegal and without jurisdiction and therefore liable to be quashed. As regards registration of respondent No. 9 Society, it is an admitted fact that the respondent No. 9 Society falls within the Municipal limits of Mehsana district. However part of the area of operation of respondent No. 9 Society falls within the Panchayat area of Vijapur District Panchayat. Mr. Nanavati argues that, according

to the Notification of the Government dated 31-8-1981 all Cooperative Societies mentioned in Schedule-II of the said Notification shall have to be registered by the District Council, irrespective of the fact whether such Cooperative Society falls within the Panchayat area of Vijapur or under District Panchayat Mehsana. Mr. Nanavati argued that, according to the notification of the Government dated 31-8-1981 all Cooperative Societies mentioned in Schedule-II of the said Notification shall have to be registered by the District Council irrespective of the fact whether such Cooperative Society falls within Panchayat area or outside the Panchayat area. For convenience, it is necessary to examine the notification which is reproduced below :-

NOTIFICATION UNDER THE GUJARAT PANCHAYATS ACT, 1961

SECTION 156.

37. In exercise of the powers conferred by section 156 of the Gujarat Panchayats Act, 1961 (Guj. VI of 1962) and in supersession of the Government order, Agriculture Forests and Co-operation Department No. KH.60/DDC/1163-43905/B, dated 30-7-1965 and Government order No. KKH/128/DDC/1172/30861-B (12), dated 22-6-1972 and order No. AKH/III-76/CDE/1076/31638/B (12), dated 22-6-1976 and of all the orders made in this behalf the Government of Gujarat hereby delegates to the each of the District Panchayats, the powers functions and duties of the Registrar of Co-Operative Societies, as specified in Schedule-I appended hereto in respect of Class of Cooperative Societies and specified in Schedule II appended hereto.

SCHEDULE I

Sr.No.	Powers	Section of the Gujarat Cooperative Societies Act. 1961 (Guj.Act No. X of 1962) under which the powers can be exercised.
1	2	3
1.	Registration of Cooperative Societies	Section-9

2.	Registers to be maintained for Co-Operative Societies	Section-10
3.	Powers of Registrar to decide certain question.	Section-11
4.	Amendment of Bye-laws of Co-operative Societies.	Section-13
5.	Change of name of Cooperative Socs.	Section-15
6.	Amalgamation, transfer, division or conversion of societies.	Section-17
7.	Cancellation of Registration of amalgamated, divided or converted societies.	Section-18
8.	Reconstruction of societies	Section-19
9.	Approval of partnership of societies	Section-21
10.	Appeal against refusing admission to membership to Society.	Section-24
11.	Handing over records, papers and property of the Cooperative Societies to their Secretaries or Chairman.	Section-75
12.	Calling annual General Meeting or extending the period of holding such meeting of Cooperative Society.	Section-77
13.	Calling Special General Meeting of the Cooperative Society.	Section-78
14.	Disposal of surplus assets of the Cooperative Societies when wound up.	Section-115

SCHEDULE II

Primary Agricultural Cooperative Credit Societies

1. Multi-purpose Cooperative Societies

2. Service Cooperative Societies

3. Large size Agricultural Multi-purpose Cooperative Societies

(LAMPS)

4. Farmers' Service Cooperative Societies (FSS)

5. Gopalak Kheti Vividh Karyakari Cooperative Societies

6. Gram Swaraj Cooperative Societies

7. Food-grain Bank

Agricultural Non Credit Cooperative Societies

1. Agricultural Essential Commodities and Seed Supply Cooperative Societies.

2. Agricultural implements and Machineries Co-Operative Societies.

3. Better Farming Cooperative Societies

4. Crop Protection Cooperative Societies

5. Land Improvement Cooperative Societies

6. Fencing Cooperative Societies

7. Bunding Cooperative Societies

Urban Credit Co operative Societies and Banks

1. Urban Cooperative Bank

2. Salary Earner's Cooperative Societies

3. Urban Cooperative Societies

Marketing and Sale Societies

1. Taluka Cooperative Purchase and Sale Cooperative Societies

2. Fruits and Vegetable Sale Cooperative Societies

3. Cotton Sale Cooperative Societies

4. Tobacco Purchase and Sale Cooperative Societies.

Canning and Processing Societies

1. Fruits and Vegetables Canning Cooperative Societeis

Farming Societies

1. Joint Farming Cooperative Societies
2. Collective Farming Cooperative Societies
3. Tenant Farming Cooperative Societies
4. Cattle Breeding Farming Cooperative Societies
5. Poultry Farming Cooperative Societies

Industrial Cooperative Societies

1. Weavers' Cooperative Societeis
2. Industrial Cooperative Societies
3. Sewing (Shivan) Cooperative Societies

Consumers' Cooperative Societies

1. Primary Consumers' Cooperative Societies
2. Students, Consumers Cooperative Stores
3. Hotel and Canteen Cooperative Societeis

Housing Cooperative Societies

1. Rural Cooperative Housing Societies
2. Water Supply Cooperative Societies

Labour Cooperative Societies

1. Forest Labourers' Cooperative Societies
2. Labour Contract Cooperative Societies

Fisheries Cooperative Societies

1. Fisherman Cooperative Societies

District Cooperative Unions

1. District Cooperative Unions

Miscellaneous Cooperative Societies

1. Transport Cooperative societies

2. Electricity Supply Cooperative Societies

3. Health Cooperative Societies

4. Medical Relief Co-operative Societies

5. Better Living Cooperative Societies

6. Gopalak Vasahat Cooperative Societies.

[Note: No. GHKH/172/81/CSA/4978/4229/D dt. 31-8-1981 Guj. Govt. Gax. Ex. Pt. I-A dt. 8-9-1981 P. 2-I]

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5. On a plain reading of the aforesaid notification it appears that certain powers, functions and duties of Registrar of Cooperative Societies as specified in Column No.3 of Schedule-I have been delegated to each of the District Panchayats in respect of Class of Cooperative Societies as specified in Schedule-II to the said notification. Mr. Nanavati on behalf of the petitioners submitted that, admittedly respondent No. 9, 10 and 11 Cooperative Societies are Primary Agricultural Cooperative Societies and they have been included in Schedule-II of the said Notification. Mr. Nanavati further argued that, according to provisions of Section 6 of the Gujarat Panchayats Act, 1993, the State Government can authorise the District Panchayats to exercise their powers and functions outside the District Panchayat limits. Mr. Nanavati accordingly submitted that in the notification dated 31-8-1981 it has not been mentioned that the District Panchayat cannot register a Cooperative Society which has been specified in Schedule-II of the said notification, if they are situated outside Panchayat limit. It is further argued by Mr. Nanavati that, since the powers of the District Council has not been limited within its jurisdiction, all Cooperative Societies

mentioned in Schedule-II to the said notification, shall have to be registered by the District Council irrespective of the fact whether such Cooperative Societies are operating within the District Council area or not. Mr. Nanavati accordingly submitted that, even if the respondent No. 9 Cooperative Society lies within the Municipal limits of Mehsana district, its registration can be done only by the District Panchayat of Mehsana. The Assistant Registrar or Additional Registrar of Cooperative Societies has no jurisdiction to register any society as mentioned in Schedule-II of the notification of the Government dated 31-8-1981. Accordingly Mr. Nanavati, learned senior counsel submitted that the respondent No. 9, 10 and 11 Cooperative Societies are admittedly Primary Cooperative Marketing Societies and since these Primary Cooperative societies are mentioned in Schedule-II of the notification of the Government dated 31-8-1981 can be registered by District Council only irrespective of the fact whether such Cooperative Societies are operating in the District Council area or not. Accordingly Mr. Nanavati submitted that, since the registration of Respondent No. 9, 10 and 11 Societies have not been approved by the District Council, the registration of these Cooperative Societies are liable to be quashed. It is also submitted that the consequence of such cancellation of registration will be the cancellation or quashing the election of any member elected in the Vijapur Market Committee from any of the aforesaid three Cooperative Societies.

6. I have also heard Mr. S.N. Shelat, Learned Advocate General appearing on behalf of the State Respondent. It is very fairly submitted by learned Advocate General that, certain powers of Registrar of Cooperative Societies has been delegated to the District Panchayats by Notification dated 31-8-1981. It is also very fairly submitted by learned Advocate General that, subsequent to that notification dated 31-8-1981 Government has not modified or cancelled the aforesaid notification. Learned Advocate general however submitted that the Government passed an order on 30-7-1965 authorising the Assistant District Registrar Cooperative Societies to register Cooperative Societies and inspite of the notification dated 31-8-1981 the Assistant District Registrar, Cooperative Societies continue to register the Cooperative Societies in pursuance of the order of the Government dated July 30, 1965. It is submitted by Learned Advocate General that from 1965 the Assistant Registrar of Cooperative Societies (Panchayats) have registered more than 112 Primary Cooperative

Societies and all these Cooperative Societies are functioning in the State. Learned Advocate General argued that, according to the notification of the Government dated 31-8-1981 the District Council is competent to register the Cooperative Societies mentioned in Schedule-II if the aforesaid Cooperative Societies are functioning within the District Panchayat area. Learned Advocate General submitted that the District Councils are functioning within their respective District Panchayat areas. Learned Advocate General also submitted that, if the Government wants to authorise the District Panchayat to exercise their function beyond the District Panchayat limits, then a specific notification under section 6 will be required to be issued by the Government. It is submitted by Learned Advocate General that the notification dated 31-8-1981 was issued under section 156 of the Gujarat Panchayats Act, 1961, which is pari materia to section 174 of the Gujarat Panchayat Act 1993. Learned Advocate General also submitted that Section 8 of the Gujarat Panchayats Act, 1961 is pari materia to Section 6 of the Gujarat Panchayats Act, 1961. Learned Advocate General accordingly submitted that by notification dated 31-8-1981 powers have not been given to District Panchayats to register Cooperative Societies mentioned in Schedule-II of the said notification if the said Cooperative Societies are functioning beyond the District Panchayat area. It is also submitted that the Cooperative Societies mentioned in Schedule-II to the notification, if, situated outside the limits of the District Panchayat, then the competent authority for registering such Cooperative Society is District Registrar and Assistant District Registrar incharge of the revenue district as per notification of the Government dated 30-3-1991. It appears from the notification dated 31-3-1991 Annexure-B of the counter affidavit of District Registrar, Cooperative Societies, Mehsana, Respondent No. 16 that the District Registrar and Assistant District Registrar, Incharge of the revenue district are competent to register Cooperative Societies having their areas of operation covering the whole of the district area or part thereof, except the Cooperative Societies, the power of registration which has been conferred on the District Panchayat. Learned Advocate General submitted that if the registration of Respondent No. 9, 10 and 11 has not been done in accordance with law and the notification of the Government dated 31-3-1981 the aforesaid Cooperative Societies will have to face the consequences. Learned Advocate General further submitted that since in pursuance of the order of the Government dated 30-7-1965 the Assistant District Registrar of Cooperative Societies (Panchayats) have

already registered large number of Cooperative Societies and those Cooperative Societies are functioning in various parts of the State, the validity of registration of those Cooperatives may not be quashed as that will lead to endless confusion and endless chaos, if registration of those Cooperatives are quashed then in that even that will have lasting repercussion and confusing consequences. Learned Advocate General accordingly submitted that the Assistant District Registrar, Cooperative Societies are entitled to register the Cooperative Societies under the Cooperative Societies Act, but they should not have registered Cooperative Societies which falls within the jurisdiction of the District Council after the notification of the Government dated 31-8-1981. Learned Advocate General also submitted that, since a large number of Cooperative Societies have been already registered by the Assistant District Registrar of Cooperative Societies (Panchayats) the validity of registration of those Societies may not be disturbed. There is sufficient force in the argument of Learned Advocate General. Learned Advocate General has drawn my attention to the case of Gokaraju Rangaraju, appellant Vs. State of Andhra Pradesh, Andhra Pradesh, AIR 1981, S.C. 1473. It has been observed by the Apex Court that, the doctrine is now well established that the acts of the Officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure. It is further observed by the Apex Court that the aforesaid doctrine is founded on good sense, sound policy and practical experience. It is omitted by the prevention of public and private mischief and the protection of public and private interest. Having regard to the submission of Learned Advocate General and relying on the decision of the Apex Court, I am of the view that the Cooperative Societies mentioned in Schedule-II to the notification of the Government dated 31-8-1981 and not situated within the District Panchayat area even if registered by Assistant Registrar, Cooperative Societies (Panchayats) and not by the District Panchayat, prior to the date of filing of this petition on 5-2-2001 shall remain undisturbed.

7. It is an admitted fact and also asserted by the respondents that, the Respondent No. 9, 10 and 11 Cooperative Societies were registered in pursuance of the decision of the Supervisory committee and on the decision of the Supervisory committee the Assistant District Registrar, Cooperative Societies (Panchayat) issued the

Registration Certificate to the said respondent Cooperative Societies. Therefore, it is clear that the application of Respondent No. 9, 10 and 11 Societies were not placed before the District Council for a decision whether the said Cooperative Societies should be granted registration or not. According to the notification of the Government dated 31-8-1981 the District Council is the competent authority to register the Cooperative Societies mentioned in Schedule-II to the said Notification and no other authority. Admittedly respondent No. 10 and 11 are Agricultural Primary Marketing Societies which is mentioned in Schedule-II to the Notification dated 31-8-1981 and are operating within the District Panchayat area. Therefore, the District Panchayat is alone competent to grant registration of Respondents No. 10 and 11 Cooperative Societies. Since this has not been done, I am clearly of the view that the registration of these two Respondent Societies No. 10 and 11 must be held to be invalid and accordingly liable to be quashed. Accordingly Registration Certificates issued by the Assistant Registrar, Cooperative Societies dated 23-10-2000 at Annexure- RJ3 (Page No. 94 and 96 collectively) in favour of Respondents No. 10 and 11 are hereby quashed.

8. The Respondent No. 9 Society falls within the Municipal Limits of Mehsana and the area of operation falls partly within the Municipal limits of Mehsana district and partly in the District Council limit of Vijapur District Council. However, it is an admitted fact that the registration office of the respondent No. 9 Society is situated within the municipal limits of Mehsana. Therefore, I am of the view that no illegality has been committed in registering Respondent No. 9 Cooperative Society by the Assistant District Registrar, Cooperative Societies (Panchayats) Mehsana and the registration of Respondent No. 9 Society cannot be held to be an illegal and invalid one.

9. Mr. Nanavati, Learned senior council appearing on behalf of the petitioner submitted that, according to provisions of Section 11, Cooperative Marketing Societies can elect two representatives. However, if the number of Cooperative Marketing Society does not exceed two, in that event only one representative shall be elected from Cooperative Marketing Society's constituency as per provisions of section 11 (1) (iii) of the Gujarat Agricultural Produce Markets Act, 1963. Mr. Nanavati accordingly submitted that when the Director issued notification under Rule 10 (2) of the Gujarat Agricultural Produce Market Rules, 1965, there were three

Marketing Cooperative Societies and the names of the members of the Managing Committee of the aforesaid three Cooperative Marketing Societies were reflected in the voters list. Mr. Nanavati also submitted, if the registration of Respondent No. 10 and 11 Societies are quashed, then there will remain only one Cooperative Marketing Society in the Vijapur market area. It is also submitted by Mr. Nanavati that, two members have been elected unopposed in the Vijapur Agricultural Produce Market Committee from respondent No. 9 Society. In case of cancellation of registration of respondent no. 10 and 11 Societies, there will be only one Cooperative Marketing Society, therefore the members of the Managing Committee cannot elect more than one member in the Market Committee from Cooperative Marketing Society Constituency. Mr. K.S. Jhaveri, Learned Counsel appearing on behalf of respondent Market Committee submitted that, there are six Cooperative Societies functioning within Vijapur APMC and learned counsel in additional reply of Respondent No.4 has also furnished the names of six cooperative Societies functioning in Vijapur APMC.

Mr. Nanavati learned senior counsel for the petitioners submitted that, out of the six Cooperative Societies mentioned by respondent no.4, Khanusa Dudh Utpadak Sahkari Mandali Limited is not a Cooperative Marketing Society, and it is a Milk Cooperative Society and therefore the aforesaid Society can be a voter in trader constituency and not in a cooperative Marketing Society constituency. Similarly Mr. Nanavati submitted that, Ladol Vividh Karyakari Sahkari Mandali Limited is dispensing agricultural credit and therefore the members of the managing committee of the aforesaid Society can be a voter in the traders constituency as contemplated under section 11 (1) (ii) of the Gujarat Agricultural Produce Marketing Act. The third Society out of the six mentioned by respondent No. 4, that is Kharod Fal Ane Sakbhaji Uppadko Ni Kharid Vechan Sahkari Mandali Limited is not a marketing society as contended by Mr. Nanavati. It is further submitted by Mr. Nanavati that all the members of the executive committee of the Mandali of Kharod was reflected in the preliminary voters list, but an objection has been filed by Natvarlal Venidas Patel alleging that the said Society do not come within the definition of Cooperative Marketing Society. It is further submitted that the authorised officer after considering objections deleted the name of Kharod Telibia Utpadak Sahkari Mandali Limited from the final voter list. Accordingly Mr. Nanavati submitted that, out of the six Cooperative Societies mentioned by respondent

No.4 in his additional affidavit dated 21-4-2001, three are not Cooperative Marketing Societies and therefore only three will remain. Out of three, respondent No. 10 and 11 Cooperative Societies are the two Cooperative Societies and respondent No. 9 is the third Cooperative society. Mr. Nanavati accordingly submitted that, as per provisions of Section 11 of the Gujarat Agricultural Produce Markets Act, since on the date of declaration under Rule 10 (2) of the Agricultural Produce Market Rules there was only one Cooperative Marketing Society, that is respondent No.9, said Society cannot elect two members from said Society. Mr. Nanavati accordingly submitted that, if the registration of Respondent No. 10 and 11 are quashed the representative from respondent No.9 Society shall be one and one member will have to vacate office as per provisions of Section 11 of the Agricultural Produce Markets Act. It is an admitted fact that, election of the members in the Vijapur Agricultural Market Committee has been declared, however the result of election of Chairman and Vice Chairman has been withheld by interim order of this Court . Since the election process have been completed and for smooth functioning of the Market Committee, I am of the view that the result of the election of Chairman and Vice Chairman of the Vijapur APMC is required to be declared. Accordingly the interim order withholding the declaration of result is vacated. However, if the Director is of the opinion that, with the quashing of the registration of Respondent No. 10 and 11 Societies, the number of representative from respondent No. 9 Society is to be reduced, in that event , I am of the view that since both the candidates have been elected unopposed, one should be retained by the Director in the Committee of the Vijapur APMC by drawing lot. It is an admitted fact that the notification by the Director under Rule 10 (ii) of the Gujarat Agricultural Produce Market Rules have been issued on 12-12-2000. The Director is accordingly directed to examine the Cooperative Marketing Societies operating in Vijapur market area on the said date and accordingly determine the number of candidates to be elected from Cooperative Marketing Society as per provisions of Section 11 (1) (iii) of the Guajrat Agricultural Produce Markets Act 1963. If the Director is of the view that as on 12-12-2000 the number of Cooperative Marketing Societies holding general licence and situated in the Vijapur market area are more than two, then the Committee already constituted may not be disturbed. However, if the Director is of the view that, as on 12-12-2000 the number of Cooperative Marketing Societies holding general licence and situated in Vijapur Market area does not exceed two, then only one representative from the Cooperative Market Constituency

shall be elected by drawing the lot. If on the consequence of reduction of one member any election of Office Bearer is necessary then such election shall be done immediately by the Director. It is made clear that while counting the number of Cooperative Marketing Societies," the Director shall not include the names of Respondents No. 10 and 11 Cooperative Societies". The Director shall proceed to determine the number to be elected under Section 11 (1) (iii) of the Gujarat Agricultural Produce Market Act only, after the decision of District Council in respect of registration of Respondent No. 10 & 11 Cooperative Societies as hereafter mentioned. From the date of this judgment all the Cooperative Societies mentioned din Schedule-II to the notification of the Government dated 31-8-1981 (Annexure-E) and operating within the District Council area shall be registered by the District Council and by no other authority in accordance with aforesaid notification of the Government dated 31-8-1981, so long the aforesaid Notification is not amended, altered or modified by the Government.

10. It appears that the Assistant Registrar Cooperative Societies (Panchayats) Mehsana registered Respondent No. 10 and 11 Cooperative Societies under an impression that he is competent to register the said Societies in pursuance of the decision of the Supervisory Committee. There appears no mala fide intention on the part of the Assistant District Registrar, Cooperative Societies (Panchayats) in issuing the registration certificates. However, since the registration has been issued without approval of the District Council, I am of the view that the prayer of respondent No. 10 and 11 Cooperative societies should be placed by the Assistant District Registrar, Cooperative societies (Panchayats) Mehsana, before the District Council and if the District council is satisfied that the Respondent No. 10 and 11 Cooperative Societies can be registered, then they may communicate their decision to the Assistant District Registrar and on receipt of such decision from the District Council, the Assistant District Registrar may issue Registration Certificate to Respondent No. 10 and 11. While considering the prayer of Respondent No. 10 and 11 for registration, the District Council if satisfied may authorise registration of Respondent No. 10 and 11 Cooperative Societies even with retrospective effect, that is the date on which the said Societies were registered by the Assistant District Registrar on the decision of the Supervisory Committee; that is from 23-10-2000. I do not like to interfere with the registration of the Cooperative Societies which might

have been registered contrary to the notification of the Government dated 31-8-1981 between the date of filing of the present petition on 5-2-2001 and the date of judgment as nobody has approached this Court challenging the registration of those Cooperative Societies. Subject to the aforesaid observations and directions, this judgment will have the prospective effect. After hearing Learned counsel of all the parties, I am of the view that, there is some merits in the petition and accordingly, it is allowed in part. The registration of Respondent No. 10 and 11 Societies are quashed, subject to the aforesaid observations. Rule made absolute to the aforesaid extent. Interim order earlier granted stands vacated. However, I make no order as to costs.

Dt: 24-4-2001

(P.K. Sarkar, J)

/vgn.